

A lawyer for Flynn, Sidney Powell, did not respond to requests for comment.

Transmission of the investigation to the Army, which has not been previously reported, leaves military officials grappling with how to handle a politically polarizing officer who in recent months alarmed the Pentagon by falsely suggesting to Trump that, as commander in chief, he could declare martial law and force a “rerun” of the presidential election in swing states that went for President Biden. Such a move could have plunged the nation into an unprecedented crisis.

Similar investigations of Trump administration officials have been released since the former president left office. Among them was a delayed Defense Department review that found retired Rear Adm. Ronny Jackson, a former White House doctor, had bullied staff, made inappropriate remarks about a female subordinate and engaged in “inappropriate conduct involving the use of alcohol” on two foreign presidential visits. Jackson, who is closely aligned with Trump, won a congressional seat as a Republican in Texas in November before the investigation was released.

An Army spokeswoman, Col. Cathy Wilkinson, acknowledged that acting Army secretary John E. Whitley had received the case for review.

“We do not have any additional information for you at this time,” Wilkinson said in an email on Friday.

The payment to Flynn from Russia dates to 2015, when the retired general appeared alongside Russian President Vladimir Putin at a gala dinner for RT, a Kremlin-controlled media organization. He was paid \$45,000 for doing so.

Flynn later disclosed that he also worked as a foreign agent representing Turkish interests for the Netherlands-based company, Inovo BV, which paid his company, Flynn Intel Group, \$530,000 in 2016. The company was founded by Kamil Ekim Alptekin, a Turkish businessman, and lobbies on behalf of the Turkish government.

In 2017, a lawyer representing Flynn at the time, Robert Kelner, said that the general had communicated with the Defense Intelligence Agency before and after his trip to Russia, and argued that Flynn met the requirements to accept foreign money. Military officials confirmed in a letter to Congress that year that Flynn had done so, stating, though, that they had no record of him seeking permission.

Separately, the Defense Department said in 2017 that Flynn did not seek permission from the U.S. government to work as a paid foreign agent for Turkish interests.

Defense Department guidelines warn that it “may pursue debt collection” if a retired service member does not secure approval to accept foreign payments before doing so. Collection due to an emoluments violation is capped at no more than what an individual made in retirement pay during a period of unauthorized employment.

Flynn, whose retirement pay is more than \$10,000 per month, worked for Inovo for three months.

# **Exhibit 17**



← Post

**General Mike Flynn**   
@GenFlynn

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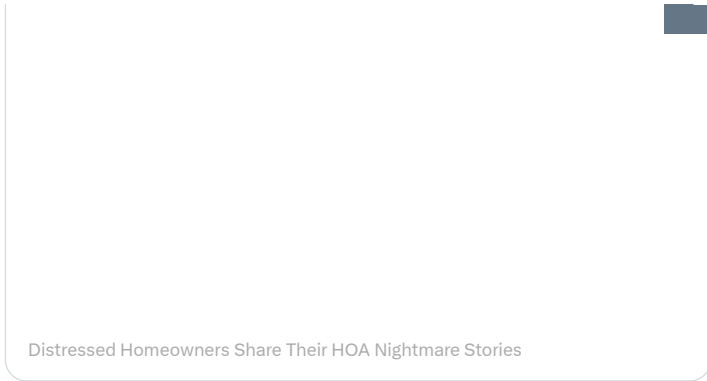
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Messages





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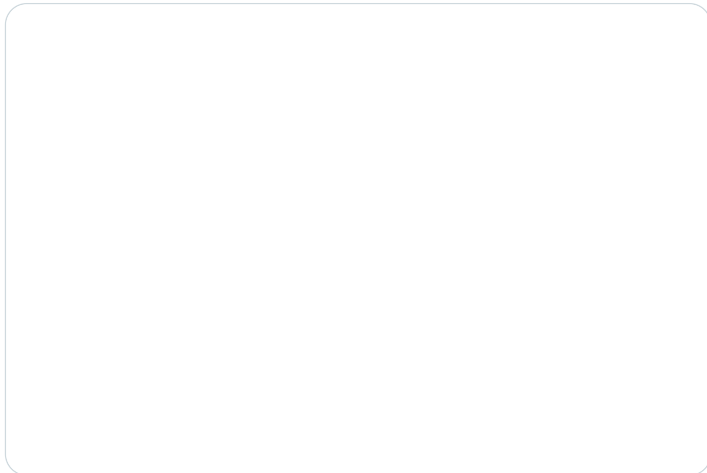
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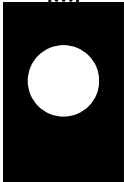
Watch the 3 part series on Epstein that dropped on Netflix to find out about Trump and Epstein living as neighbors in Palm Beach.

#Qnuts



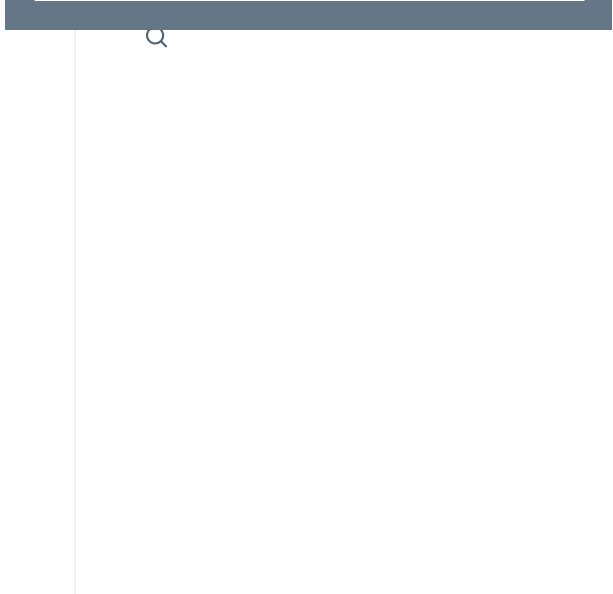
49 15 146





Messages





# **Exhibit 18**

Trump has recently hosted three QAnon heroes at the White House, surged his QAnon-boosting activity on Twitter and toyed with ideas circulating in the QAnon community.



A person wears a QAnon sweatshirt during a pro-Trump rally on Oct. 3, 2020. | Stephanie Keith/Getty Images

By TINA NGUYEN

12/23/2020 06:18 PM EST



With his presidency dwindling, Donald Trump is turning to QAnon heroes, contemplating QAnon ideas and boosting QAnon accounts.

At the White House, Trump has recently hosted three of the conspiracy movement's most prominent figures. On Twitter, he has surged his activity boosting QAnon-linked accounts. And he's been toying with a series of suggestions — such as seizing the voting machines — that are circulating in QAnon circles.

AD

Trump has long flirted with QAnon figures and equivocated when asked to denounce the movement, which believes Trump is fighting a Satan-worshipping cabal of nefarious elites who control Washington.

But Trump's recent moves are perhaps the most he has directly engaged with QAnon-beloved figures as president in such a short time period. In a matter of several days, he met multiple times with Sidney Powell, the controversial attorney who is a hero in the QAnon community, and talked multiple times with Rep. elect-Marjorie Taylor Greene of Georgia, the first QAnon-booster to get elected to Congress. He also met with Michael Flynn, the former Trump national security adviser who became a celebrated QAnon figure after seeking to rescind a guilty plea for lying to the FBI.

And on Sunday, Trump retweeted 11 QAnon-linked accounts — the most he had elevated Q content since July 4, according to Media Matters for America, a progressive watchdog site monitoring far-right media.

The behavior itself does not prove that Trump is specifically targeting a QAnon audience or embracing the ideas of the movement itself. But it does show how the president is increasingly turning to the most extreme and loyal corners of his base as more and more Republicans back away from his flailing effort to overturn President-elect Joe Biden's win. And, whether he intended it or not, the confluence of events was received as a signal among QAnon adherents.

AD

In their eyes, "it's big 'end of days' stuff for those people to all be meeting — it means the final blow is about to be delivered," said Mike Rothschild, a conspiracy theory researcher working on a book about QAnon. In the apocalyptic QAnon community, the final blow is "The Storm," a long-predicted day of reckoning when Trump institutes martial law and the elites are arrested, tried in front of military tribunals and executed.

QAnon frequently reads omens about The Storm in the most minuscule of Trump actions, such as references to "storms" in meetings, or appearing to draw a "Q" with his fingers during a speech. So when Trump brought in Flynn, who [took the QAnon pledge](#) and has argued he is a deep state target, and Powell, who represented Flynn in his fight against government prosecutors, it sent waves of excitement through QAnon followers.

"They see Flynn as meeting with Trump because he'll lead this military effort that Trump will start by invoking the Insurrection Act" — the little-used law that lets the president deploy the military to quell domestic rebellions — "and

Powell is the legal enforcer who will make sure that their insanely unconstitutional coup is by the book,” Rothschild said.



THE FRIDAY COVER

## The #MAGA Lawyer Behind Michael Flynn’s Scorched-Earth Legal Strategy

BY KEITH KLOOR | JANUARY 17, 2020 05:09 AM

The moves — especially given Trump also considered appointing Powell as a White House special counsel to investigate the election — fits a broader pattern of Trump and his allies increasingly nodding to the QAnon community during the pandemic.

Trump has [amplified accounts that boost the conspiracy theory](#) and its canon through tweets and retweets, but his allies have made even more overt references — from his son Eric posting a “Q” on Instagram to Republican Senate candidates accepting endorsements from QAnon influencers and

AD

When asked about QAnon in August, Trump refused to distance himself: “I don’t know much about the movement other than I understand they like me very much, which I appreciate,” he said.

So while Trump may not know the extent of the connection between QAnon and figures like Powell, Flynn and Greene, he does seem to understand that they command big audiences.

“It’s one last big show for dramatic effect or whatever it may be, but he knows [Flynn and Powell] have massive followings,” said Karim Zidan, a researcher who follows QAnon for the progressive watchdog group Right Wing Watch.

And Trump has frequently [extended unorthodox White House invitations](#) as political [statements to people with large digital audiences](#).

“For all we know, Trump could be someone who has no idea about the exact depths of QAnon,” Zidan said. “Maybe he understands it better than it appears. One way or another, he knew that by bringing those two characters in, that it was going to lead to this sort of discussion online.”

But although Trump appears to be winking at the QAnon crowd, experts and QAnon researchers expressed doubt that Trump could get any immediate benefit from leaning into his most conspiratorial supporters — especially since they will settle for nothing less than The Storm.

“It’s a little late in the game here,” said Angelo Carusone, president of the left-leaning Media Matters, which monitors extremist groups and far-right media. “At this point, it is like the bare minimum he could do to satisfy the Q crowd.”

Indeed, since the election — the “day of reckoning” that was supposed to lead to The Storm — the QAnon conspiracy has faced a series of crushing blows to the faith. “Q,” the shadowy figure posting cryptic “Q drops,” has barely posted. And Ron Watkins, the administrator of the site 8kun, which hosts the “Q drops,” announced his sudden resignation.

AD



Additionally, allies that QAnon followers had idolized — Attorney General William Barr, for instance — have said there was no widespread election fraud. And though “Q” repeatedly suggested that a conservative majority on the Supreme Court would protect Trump, the court — with three Trump-appointed justices, no less — struck down the president’s most-touted lawsuit challenging the election.

But QAnon supporters view Flynn and Powell differently, said Rothschild. Ever since Flynn picked up Powell as his lawyer, he has portrayed himself as a deep state victim, appearing on QAnon podcasts, performing the QAnon oath on video and echoing their call for invoking martial law to prevent Biden’s White House ascension. Powell, who has frequently promised a massive series of lawsuits exposing election fraud, is [just as overtly QAnon](#).

“These [are] his last hardcore acolytes, the ones who haven’t given up on the idea of him snapping his fingers and staying on for a second term,” Rothschild said. “Most of the rest of the GOP is slowly starting to move on, but the Q people are still 1,000 percent on board with whatever this nonsense is. They praise him, and he reflects back their praise.”

Still, QAnon cannot praise Trump the way it once did. Many of its most prominent adherents have been booted from major social media networks, forcing them to either migrate to obscure platforms or change their slogans and memes to avoid banishment.

Zidan, the QAnon researcher, noted that previously, “Facebook pages were growing in the thousands per day” after a Trump tweet engaging with the community. After Facebook, YouTube and Twitter all instituted bans, though, QAnon’s most loyal retreated to platforms like Telegram, “which is a lot more popular in places like Russia” than in the United States, or forums like 8kun, which “are not very user friendly.”

AD

“But it’s safe to say that there hasn’t been a massive increase,” Zidan said. “Trump has been retweeting a lot of QAnon accounts over the past few days. Every other day, you’re seeing him retweet something from someone who’s either a QAnon adherent or an influencer in the space. And you think that would have a massive effect, but it hasn’t.”

## The Biden Transition

Joe Biden may be the new president-elect — but with President Donald Trump continuing to challenge the results and Senate control up still up for grabs, the story of the election is far from over.

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- Biden’s transition chief blasts ‘obstruction’ by political appointees **at OMB and the Pentagon.**
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### TRUMP AND THE GOP

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# **Exhibit 19**

HAPPENING NOW

House is voting on Rep. Jim Jordan's nomination to become the next speaker. Watch CNN

## Heated Oval Office meeting included talk of special counsel, martial law as Trump advisers clash

By [Kevin Liptak](#) and [Pamela Brown](#), CNN

Updated 9:15 PM EST, Sun December 20, 2020



≡ CNN politics

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Heated Oval Office meeting included talk of martial law

03:08 - Source: [CNN](#)

**(CNN)** — President Donald Trump convened a heated meeting in the Oval Office on Friday, including lawyer Sidney Powell and her client, former national security adviser Michael Flynn, two people familiar with the matter said, describing a session that began as an impromptu gathering but devolved and eventually broke out into screaming matches at certain points as some of Trump's aides pushed back on Powell and Flynn's more outrageous suggestions about overturning the election.

Flynn had suggested earlier this week that Trump could invoke martial law as part of his efforts to overturn the election that he lost to President-elect Joe Biden – an idea that arose again during the meeting in the Oval Office, one of the people said. It wasn't clear whether Trump endorsed the idea, but others in the room forcefully pushed back and shot it down.

The meeting was first reported by the New York Times.

White House aides who participated in the meeting, including White House chief of staff Mark Meadows and counsel Pat Cipollone, also pushed back intensely on the suggestion of naming Powell as a special counsel to investigate voter fraud allegations Trump's own administration has dismissed (or, as seems more feasible, hiring her in the administration for some kind of investigatory role). Powell has focused her conspiracies on voting machines and has floated the notion of having a special counsel inspect the machines for flaws.

Another idea floated in the meeting was an executive order that would permit the government to access voting machines to inspect them.

---

One person described the meeting as “ugly” as Powell and Flynn accused others of abandoning the President as he works to overturn the results of the election.

“It was heated – people were really fighting it out in the Oval, really forceful about it,” one of the sources said.

One of the sources described an escalating sense of concern among Trump’s aides, even those who have weathered his previous controversies, about what steps he might take next as his term comes to an end.

Shortly after that meeting, Trump’s campaign staff received a memo from the campaign legal team on Saturday instructing them to preserve all documents related to Dominion Voting Systems and Powell in anticipation of potential litigation by the company against the pro-Trump attorney.

The memo, viewed by CNN, references a letter Dominion sent to Powell this week demanding she publicly retract her accusations and instructs campaign staff not to alter, destroy or discard records that could be relevant.

A serious internal divide has formed within Trump’s campaign following the election with tensions at their highest between the campaign’s general counsel, Matt Morgan, who sent the memo Saturday, and Trump lawyer Rudy Giuliani.

Giuliani had called the Department of Homeland Security’s Ken Cuccinelli and asked if it was possible for DHS to seize voting machines, according to two sources familiar with the call. Cuccinelli, the senior official performing the duties of the DHS deputy secretary, told Giuliani it wasn’t within the authority of the department’s cybersecurity agency to seize voting machines, according to one of the sources, who said the call took place Thursday. The call was first reported by the New York Times.

Though the campaign once distanced itself from Powell, Trump has been urging other people to fight like she has, according to multiple people familiar with his remarks. He has asked for more people making her arguments, which are often baseless and filled with conspiracy theories, on television.

CNN spotted Powell leaving the residence side of the White House shortly before 9 p.m. ET Sunday.

Powell denied that she was meeting with Trump, but when pressed again as to whether she met with the President or other White House officials, Powell retorted: “It would be none of your business.”

*This story has been Sunday updated with additional reporting.*

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# **Exhibit 20**

# Trump Weighed Naming Election Conspiracy Theorist as Special Counsel

In a meeting at the White House on Friday, President Trump weighed appointing Sidney Powell, who promoted conspiracy theories about rigged voting machines, to investigate voter fraud.



By Maggie Haberman and Zolan Kanno-Youngs

Published Dec. 19, 2020 Updated Jan. 18, 2021

President Trump on Friday discussed naming Sidney Powell, who as a lawyer for his campaign team unleashed conspiracy theories about a Venezuelan plot to rig voting machines in the United States, to be a special counsel overseeing an investigation of voter fraud, according to two people briefed on the discussion.

It was unclear if Mr. Trump will move ahead with such a plan.

Most of his advisers opposed the idea, two of the people briefed on the discussion said, including Rudolph W. Giuliani, the president's personal lawyer. In recent days Mr. Giuliani has sought to have the Department of Homeland Security join the campaign's efforts to overturn Mr. Trump's loss in the election.

Mr. Giuliani joined the discussion by phone initially, while Ms. Powell was at the White House for a meeting that became raucous and involved people shouting at each other at times, according to one of the people briefed on what took place.

Ms. Powell's client, retired Lt. Gen. Michael T. Flynn, the former national security adviser whom the president recently pardoned, was also there, two of the people briefed on the meeting said. Some senior administration officials drifted in and out of the meeting.

During an appearance on the conservative Newsmax channel this week, Mr. Flynn pushed for Mr. Trump to impose martial law and deploy the military to "rerun" the election. At one point in the meeting on Friday, Mr. Trump asked about that idea.

Ms. Powell's ideas were shot down by every other Trump adviser present, all of whom repeatedly pointed out that she had yet to back up her claims with proof. At one point, one person briefed on the meeting said, she produced several affidavits, but upon inspection they were all signed by a man she has previously used as an expert witness, whose credentials have been called into question.

The White House counsel, Pat A. Cipollone, and the White House chief of staff, Mark Meadows, repeatedly and aggressively pushed back on the ideas being proposed, which went beyond the special counsel idea, those briefed on the meeting said.

Mr. Cipollone told Mr. Trump there was no constitutional authority for what was being discussed, one of the people briefed on the meeting said. Other advisers from the White House and the Trump campaign delivered the same message throughout the meeting, which stretched on for a long period of time.

Mr. Trump was defeated in the election by President-elect Joseph R. Biden Jr. by more than 7 million votes. The states have confirmed Mr. Biden's Electoral College victory by a margin of 306-232.

But Mr. Trump, egged on by supporters like Ms. Powell, has never conceded and, holed up inside the White House, he continues to assert that he actually won — even though the baseless claims Ms. Powell and others have made of widespread fraud have been thoroughly debunked and even many of Mr. Trump's closest allies have dismissed as preposterous her tale of an international conspiracy to rig the vote.

Mr. Trump tends to think of Justice Department appointees when he describes special counsels, but those briefed on the meeting said the idea was for Ms. Powell to serve as a special counsel within the White House, appointed by the president, according to those briefed on it.

Mr. Trump also asked about Ms. Powell being given security clearances to pursue her work, two of the people briefed on the meeting said.

Ms. Powell accused other Trump advisers of being quitters, according to the people briefed.

But the idea that Mr. Trump would try to install Ms. Powell in a position to investigate the outcome sent shock waves through the president's circle. She has repeatedly claimed there was widespread fraud, but several lawsuits she filed related to election fraud have been tossed out of court.

A White House spokesman, Ms. Powell and a spokeswoman for Mr. Giuliani did not respond to requests for comment.

Mr. Trump has been in contact with Ms. Powell at other times in recent days, even though his campaign last month sought to distance itself from her as she aired wild and baseless claims about Dominion Voting Systems machines, which were used in some states, somehow being connected to a Venezuelan plot to control the election.

Dominion officials have demanded that Ms. Powell retract her claims. The Trump campaign on Saturday sent a memo to campaign officials telling them to preserve documents related to Ms. Powell and Dominion in case of legal action by the company against Ms. Powell, according to a report by CNN that a campaign official confirmed.

Since the election, Mr. Trump had pushed the outgoing attorney general, William P. Barr, to appoint a special counsel to look into election fraud, as well as one to investigate Hunter Biden, President-elect Joseph R. Biden Jr.'s son. Mr. Barr, people briefed on the matter said, has been unwilling to do what Mr. Trump wanted.

Mr. Trump and Mr. Giuliani have been pushing for data that would provide evidence of widespread election fraud. Mr. Barr has said the Justice Department has found no evidence of fraud on a scale that would change the outcome of the election.

Part of the White House meeting on Friday night was a discussion about an executive order to take control of voting machines to examine them, according to one of the people briefed on the discussion.

Mr. Giuliani has separately pressed the Department of Homeland Security to seize possession of voting machines as part of a push to overturn the results of the election, three people familiar with the discussion said. Mr. Giuliani was told the department does not have the authority to do such a thing.

The conversation between Mr. Giuliani and Kenneth T. Cuccinelli II, the acting deputy secretary of the Homeland Security Department, took place in the past week, according to the people familiar with the discussion, who were granted anonymity because they were not authorized to describe the conversation.

The department oversees the Cybersecurity and Infrastructure Security Agency, the agency responsible for safeguarding critical systems, such as elections and hospitals.

Mr. Cuccinelli is said to have told Mr. Giuliani that there is no authority by which the agency, which spent the year working with state election officials to prepare for the election, could assert control over voting machines in those states.

It was unclear whether Mr. Trump facilitated the phone call.

Mr. Giuliani called Mr. Cuccinelli this week to push the department to re-examine the machines to find evidence of what the Trump campaign has called widespread fraud, two of the people briefed on the discussion said.

The effort by Mr. Trump's campaign to use the cybersecurity agency in the push to overturn the results of the election comes after the president last month fired the head of that agency, Christopher C. Krebs. Before he was ousted, Mr. Krebs joined other top election officials in calling the 2020 election "the most secure in American history."

State and local governments take the lead in managing elections in the United States while the cybersecurity agency primarily provides support, guidance and intelligence with the local leaders on potential threats to the voting system.

“We don’t own those networks and we do not have independent legal authority to go in and start combing through those networks,” said Suzanne Spaulding, an under secretary for cybersecurity and critical infrastructure in the Obama administration. “Efforts that appear to be driving a partisan agenda, particularly completely unfounded allegations, significantly undermine the hard work these men and women have been engaged in for years.”

Mr. Cuccinelli, who led the federal government’s legal immigration agency before rising to become the second highest ranking official in the Homeland Security Department, emerged as one of the public faces of the department’s cybersecurity efforts in the weeks before the election, joining Mr. Krebs in urging patience when it comes to counting the votes.

**Maggie Haberman** is a White House correspondent. She joined The Times in 2015 as a campaign correspondent and was part of a team that won a Pulitzer Prize in 2018 for reporting on President Trump’s advisers and their connections to Russia. More about Maggie Haberman

**Zolan Kanno-Youngs** is the homeland security correspondent, based in Washington. He covers the Department of Homeland Security, immigration, border issues, transnational crime and the federal government’s response to national emergencies and security threats. More about Zolan Kanno-Youngs

A version of this article appears in print on , Section A, Page 28 of the New York edition with the headline: Trump Discussed Making Conspiracist Special Counsel

# **Exhibit 21**

ADVERTISEMENT

# Mike Flynn endorses the selling of QAnon merchandise that pays into his legal defense fund with supporters saying buying t-shirts and hats helps pardoned ex-national security adviser 'in the fight against fake news'

- Lt. Gen. Michael Flynn, President Donald Trump's national security adviser, promoted QAnon merchandise on Twitter Tuesday
- The merchandise, being sold on the website TheShirtShowUSA, pays into Flynn's legal defense fund
- The shirts and hats include the Q phrase 'WWG1WGA' and also #IStandWithFlynn

By [NIKKI SCHWAB, SENIOR U.S. POLITICAL REPORTER FOR DAILYMAL.COM](#)

PUBLISHED: 17:04 EST, 30 December 2020 | UPDATED: 20:22 EST, 30 December 2020

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Lt. Gen. Michael Flynn, President **Donald Trump**'s first national security adviser, is promoting **QAnon** merchandise, which is being sold to boost his legal defense fund.

On Tuesday, Flynn tweeted about the site **TheShirtShowUSA**, which sells hats and t-shirts branded with Flynn's name and branded with the QAnon slogan 'WWG1WGA,' which stands for 'where we go one, we go all.'

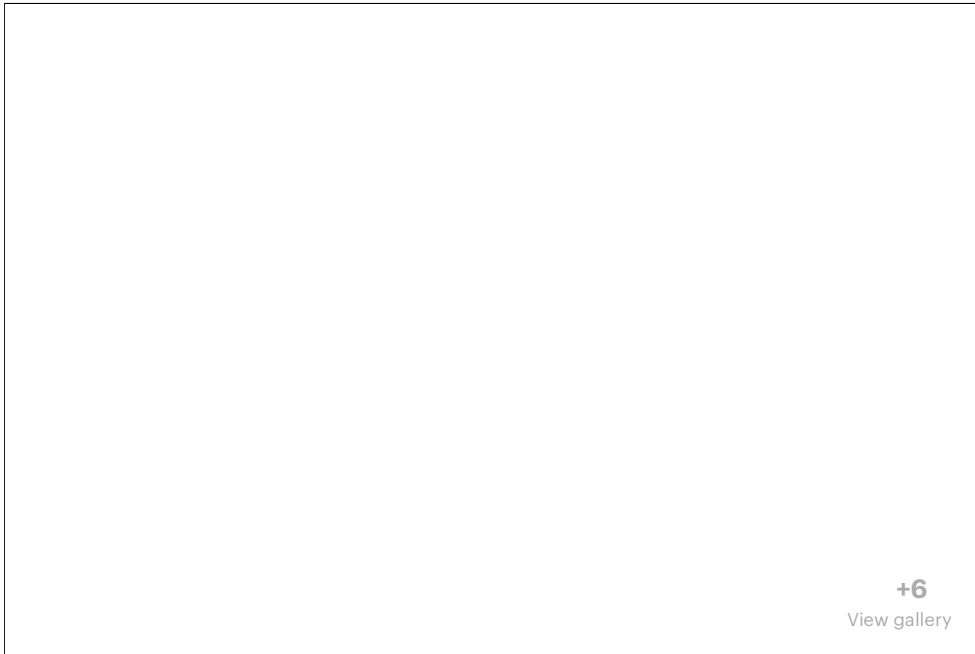
'Each purchase helps General Flynn and his army of Digial Soldiers in the fight against fake news. You can make a difference in the fight. Purchase official General Flynn and Digital Soldiers Media merch here and share this link,' read a tweet Flynn had highlighted.

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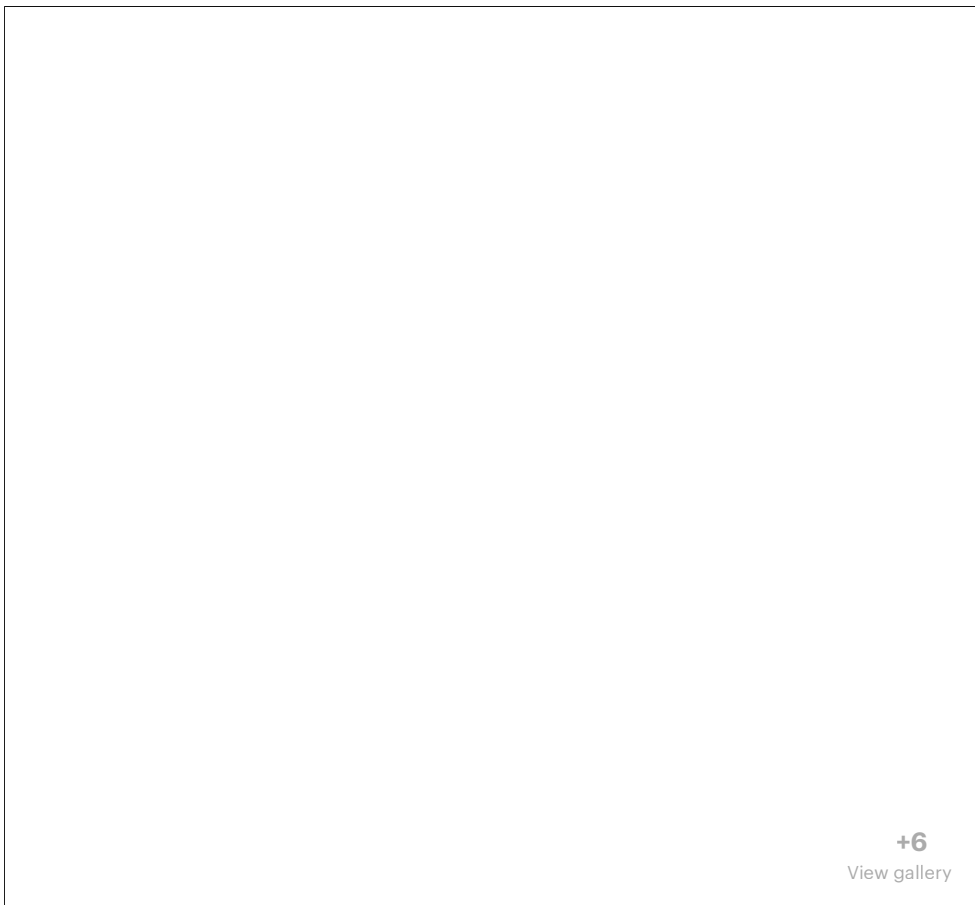
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View gallery

**Michael Flynn, President Donald Trump's original national security adviser, has further leaned in to his support of the QAnon conspiracy theory, endorsing a merchandise website that sells only pro-Flynn and QAnon t-shirts and hats**



+6

View gallery

**Hats on the site include those in support of Flynn, including one with the QAnon catchphrase '#IStandWithFlynn'**

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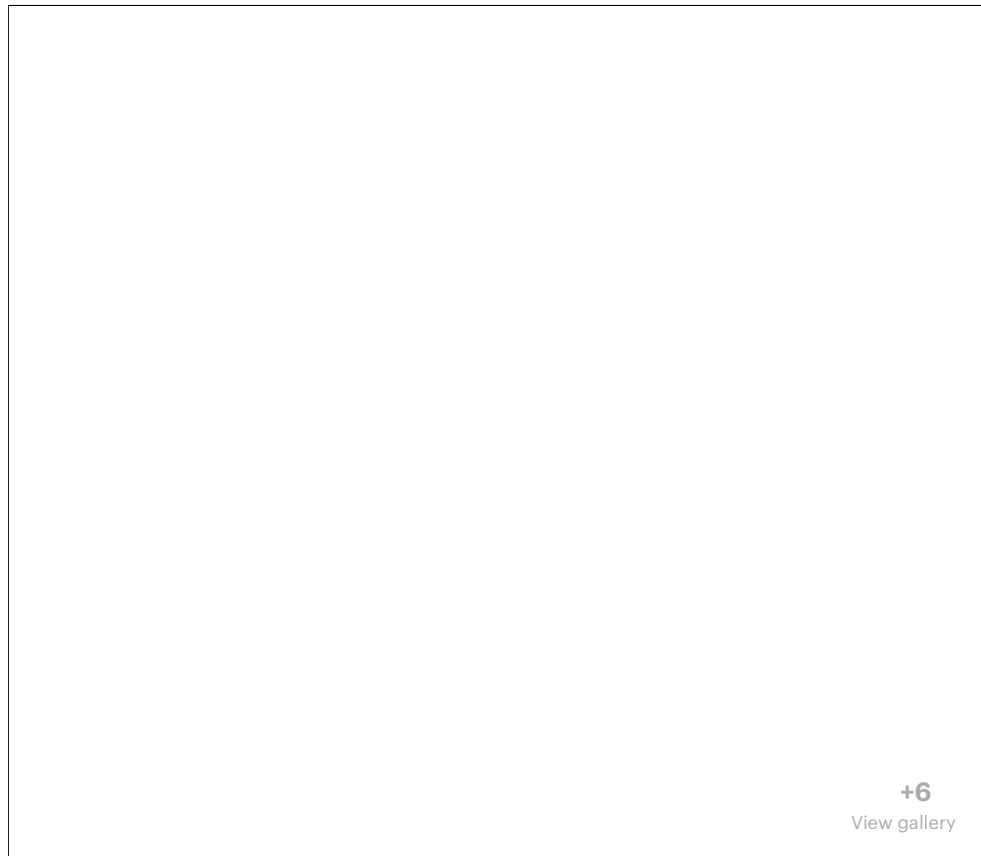


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+6

View gallery

**Flynn tweeted Tuesday an endorsement of the Q-branded products, with one supporter saying that the proceeds will be used 'in the fight against fake news'**

**The Daily Beast first reported** that the merch included the well-known QAnon slogan.

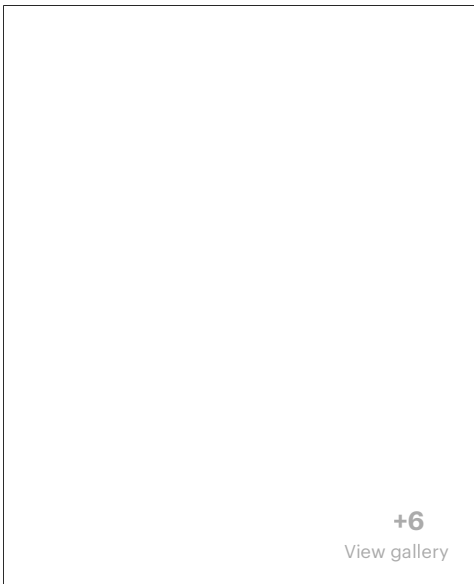
Other merchandise on the site says 'General Flynn #JusticeForAll' and '#FightLikeAFlynn.'

The site contains a warning that the store was facing 'high order volume' and warned of shipping delays.

On Twitter, users mulled whether it was a 'high end gift.'

Trump pardoned Flynn on Thanksgiving eve of this year, as he's slowly pardoned all of his allies associated with Special Counsel Robert Mueller's Russia probe.

Earlier this month a judge tossed out Flynn's remaining legal case because the pardon made it moot.



+6

View gallery

**A shirt on the site includes the QAnon phrase 'WWG1WGA' and '#IStandWithFlynn'**

**EXCLUSIVE** Annie Lennox, 69, cuddles up to husband Mitchell Besser, 68, as they stroll together hand-in-hand during a rare outing in LA  
The Eurythmics singer

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Incident in Los Angeles



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The fashion icon stunned

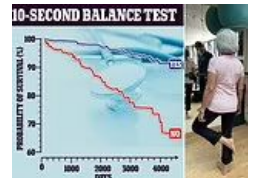
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Believers in the QAnon conspiracy theory have floated that Flynn could be 'Q,' the 'deep state' insider who leaves online clues to expose the pedophilia ring of Satan worshippers who are out to get Trump.

Like 'pizzagate,' the QAnon conspiracy's predecessor, those carrying out the bad acts are Hollywood elite and Democratic politicians.

In the last six months, Flynn has leaned in to his folk hero status among the Q set.

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In July, he posted video where he took an oath, but ended it with the phrase 'where we go one, we go all.'

He's also appeared on QAnon podcasts since getting pardoned by Trump.

Flynn's lawyer Sidney Powell has become a central character in the president's bizarre attempts to overturn the results of the 2020 election, threatening at one point to 'unleash the kraken.'

Flynn has been a player in this saga too, suggesting that the president impose martial law and have the military rerun the election instead of giving power up to President-elect Joe Biden, the winner of the presidential election despite Trump's loud protests.

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## THE MIKE FLYNN SAGA: HOW TRUMP APPOINTEE BECAME INCENDIARY STORY

Mike Flynn was a career Army intelligence officer who served in Afghanistan and Iraq and was still in uniform as a three-star general when he became Barack Obama's head of Defense Intelligence in July 2012.

But he fell out badly with the Obama administration, was forced out in July 2014 and moved into private intelligence consulting.

### 2015

December 10: Flynn is paid to travel to Moscow and sits beside Vladimir Putin at dinner celebrating propaganda outlet RT (right). His consulting business has Russian clients

### 2016

February: Flynn signs up to provide national security advice to the Trump campaign; in the next few months he is floated as a possible running mate

July 20 : Flynn leads 'lock her up' chants at the Republican National Convention and claims Obama concealed the actions of Osama bin Laden

July 31: FBI open counter-intelligence investigation Crossfire Hurricane into group of Trump aides, including Flynn, for possible Russian influence. In 2014 an FBI informer had told agents he saw Flynn spending time at a dinner in the UK with a Russian woman with ties to Kremlin intelligence; the

information is included in their investigation. Flynn is code-named **Crossfire Razor**

**November 4: Trump wins the election, and meets Obama who advises him not to hire Flynn. Trump ignores the advice and makes him national security adviser designate**

**November 30: Obama's ambassador to the United Nations, Samantha Power, makes the first of what will be 48 requests by Obama and Obama-eras officials to 'unmask' a redaction from intelligence reports which covers up Flynn's name**

**December 2016**

**Flynn meets Russian ambassador Sergei Kislyak (right) at Trump Tower and exchanges calls and messages throughout the month.**

**December 29: Hours after Obama announces sanctions on Russia for election interference, they speak and Flynn says it will be 'reviewed' when Trump takes power. The call is heard by intelligence agents who monitor Kislyak's calls and details are included in intelligence reports.**

**The next day Putin says Russia won't retaliate for the sanctions**

**2017**

**January 4: FBI drafts report saying there is 'no derogatory information on RAZOR [Flynn].' But 20 minutes later FBI counterintelligence agent Peter Strzok tells case agent 'don't close RAZOR,' and '7th floor involved' meaning FBI leadership. He also emails lover Lisa Page, a senior FBI lawyer, about the Logan Act - a never-enforced 1799 law banning private people from interfering in foreign relations. 'Razor still open,' he writes and calls news 'serendipitously good'. 'Phew, but yeah, that's amazing that he is still open. Good I guess,' Page replies. Strzok respond: 'Yeah, our utter incompetence actually helps us. 20% of the time I'm guessing :)'**

**January 5: Obama holds Oval Office briefing on Russian election interference with Joe Biden, CIA director John Brennan, FBI director James Comey, Director of National Intelligence James Clapper and deputy attorney general Sally Yates. He asks Comey and Yates to stay behind and says he has 'learned of the information' about Flynn's call to Kislyak. Comey mentions the Logan Act**

**January 6: Obama's top intel figures - Brennan, Clapper and Comey - give the Trump team including Trump a briefing on Russia at Trump Tower**

**January 10: Joe Biden is most senior Obama official to request an 'unmasking' of an intelligence report which reveals Flynn's name**

**January 12: Bombshell Washington Post report reveals Flynn's call to Kislyak on December 29, 'according to a senior U.S. government official' saying: 'What did Flynn say, and did it undercut the U.S. sanctions?' It mentions the Logan Act**

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Spotted at a NYE party

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**January 14: Flynn tells Pence he did not discuss sanctions; in coming days Trump officials repeat this on television - including Mike Pence the following day**

**January 20: Trump is inaugurated; Flynn becomes national security advisor**

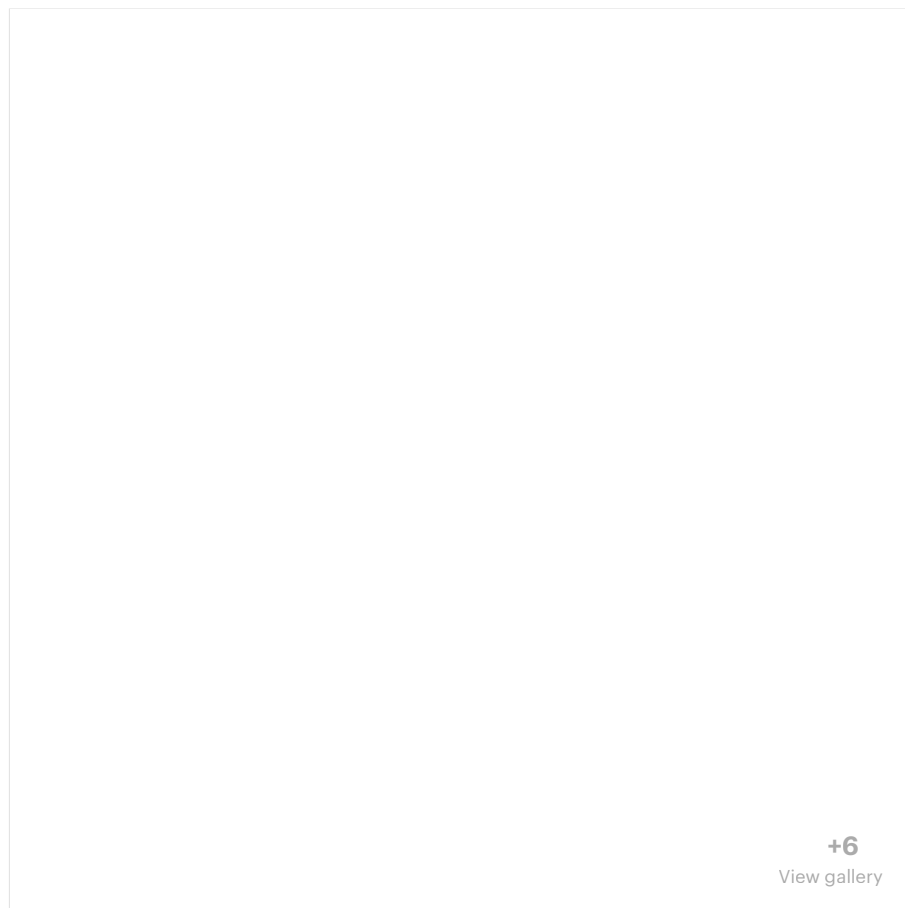
**January 22: The Wall Street Journal reveals Flynn is subject to a counter-intelligence investigation over links to Russia**

**January 23: Strzok and Andrew McCabe the FBI Deputy director exchange messages planning to interview Flynn**

**January 24: Two FBI agents - Peter Strzok and one whose name remains secret - go to the White House and interview Flynn in his West Wing office. Their notes say he denies talking about sanctions with Kislyak and said 'if I did I don't remember'**

**January 26 and 27: Yates tells White House counsel Don McGahn that Flynn has lied to Mike Pence and other officials, is therefore compromised, could be blackmailed by Russia, and other aspects of his conduct are worrying which she can't tell McGahn because they are classified**

**January 28: Flynn sits in the Oval Office to take part in Trump's first call with Putin**



**February 9: Washington Post reveals Flynn did discuss sanctions and publishes interview in which he repeats denial 'categorically.' After the story is published, he tells the newspaper a different version - that he may have discussed sanctions**

**February 10 and 11: Trump says he will 'look into' Flynn but the aide is at Mar-a-Lago dinner with Shinzo Abe**

▶ figure - and yes she does eat spaghetti (but there is a twist!) Inside her diet regime



**EXCLUSIVE** Sam Smith SPLITS from fashion designer boyfriend Christian Cowan after a year and is spotted back on celebrity dating app Raya

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His home in Oyster Bay



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He works out every day



▶ Boston Mayor Michelle Wu's 'no whites' party did not violate law, Massachusetts AG's office says



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**February 13: Washington Post reveals that McGahn was warned about Flynn by Yates. Flynn resigns admitting he 'inadvertently' misled Pence, prompting Pence to mislead on Face the Nation in January**

**February 14: Trump meets Comey and says Flynn is 'a good guy' and 'I hope you can see your way to letting this go.'**

**March 30: Flynn offers to testify to Congress - at the time both House and Senate are Republican-controlled - or the FBI on Trump-Russia in exchange for immunity from prosecution; nobody takes up the deal offer**

**May 9: Trump fires Comey, and on May 17 Robert Mueller is appointed special counsel**

**May 10: Senate Intel Committee subpoena Flynn for his contacts with Russia; he cites Fifth Amendment; they later subpoena in more detail, and by early June he turns over documents voluntarily**

**November 5: Mueller's investigators revealed to be ready to indict Flynn and his son Michael Jr. on multiple charges. They are looking at his foreign lobbying and even whether he plotted to kidnap a Turkish cleric from the U.S. and deliver him to Turkey - but are also willing to strike a deal to let his son off if he flips**

**November 16: Mueller team interview Flynn for first time**

**November 22: Flynn withdraws from 'joint defense deal' with Trump, suggesting a deal is in the works**

**December 1: Flynn signs a plea deal with Mueller; he will plead guilty to lying to the FBI at the White House interview. In exchange his son gets out of charges, and Flynn himself escapes charges of failing to register his lobbying for foreign entities. He appears in court and admits under oath lying to the FBI and affirms that he understands the deal. 'I recognize that the actions I acknowledged in court today were wrong, and, through my faith in God, I am working to set things right,' he says. The White House says: 'The false statements involved mirror the false statements to White House officials which resulted in his resignation in February of this year.'**

**December 2: Trump tweets: 'I had to fire General Flynn because he lied to the Vice President and the FBI'**

## 2018

**January: Flynn is repeatedly interviewed as he cooperates with Mueller and sentencing is repeatedly deferred**

**June 7: Obama deputy national security advisor reveals in book that Obama administration first learned of Flynn's December 2016 communications with Kislyak from Trump transition team members and not from 'unmasking' his name in intelligence reports**

**December 18: Flynn appears in court for sentencing hearing; Mueller's recommendation is little or no jail time. But Judge Emmet Sullivan says**

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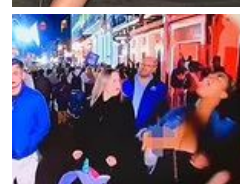
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**'arguably you sold your country out' and asks why he was not charged with 'treason.' Sentencing is deferred**

## 2019

**June 12: Flynn fires Covington & Burling, his white shoe law firm, and hires new lawyer Sidney Powell, who had told him on Fox News to ditch his plea deal**

**August 30: Flynn files motion accusing prosecutors of conning him into a guilty plea by withholding exculpatory material while other parts of the government trying to 'smear' him as a Russian agent**

**December 16: Judge rejects Flynn's motion after reviewing Intel Inspector General report into the FBI and DOJ actions before the 2016 election and sets sentencing date for January 28**

## 2020

**January 7: Prosecutors say they want up to six months for Flynn; a week later he files to ask to withdraw his guilty plea 'because of the government's bad faith, vindictiveness, and breach of the plea agreement.' A week later he asks for probation if he can't get out of his deal. Sentencing is deferred until February 20**

**February 14**

**Attorney General Bill Barr appoints political appointee Jeffrey Jensen, U.S. attorney for the Eastern District of Missouri, to examine Flynn's prosecution**

**April 29**

**New notes released by Jensen show Strzok discussing keeping Flynn as a target on January 4 2017. They also show an unnamed FBI official's notes from around the interview with Flynn on January 24 2017, saying: 'What is our goal? Truth/Admission or to get him to lie, so we can prosecute him or get him fired?' Trump starts a tweet storm which lasts into the next day, saying: 'What happened to General Michael Flynn, a war hero, should never be allowed to happen to a citizen of the United States again!'**

**May 7**

**Department of Justice says it is withdrawing support for prosecuting Flynn saying the interview in the West Wing was 'untethered to, and unjustified by, the FBI's counterintelligence investigation into Mr. Flynn' and that it was 'conducted without any legitimate investigative basis.' But career prosecutors who have led the case quit just before the move is announced**

**May 12**

**Judge Emmet Sullivan puts a hold on prosecutors dropping the case and the next day appoints a 'friend of the court,' former Mafia prosecutor and retired**

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The 50-year-old spoke on her podcast about 'a lot of selling going on'

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After being on and off with Tristan Thompson

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**federal judge John Gleeson to argue against the DOJ's motion to dismiss, causing uproar among Flynn's supporters**

**May 13**

**A series of senior Obama officials are named as having asked for 'unmaskings' of intelligence reports which resulted in Flynn's name being uncovered, in newly-declassified documents. But it later emerges intelligence report of his call to Kislyak used his full name so people with access to it could understand who the Russian was speaking to, which also means leaking his name is not a crime**

**May 21**

**Three-judge appeals panel orders Judge Sullivan to explain legal basis for not accepting prosecution request to drop Flynn's conviction**

**May 22**

**FBI director Christopher Wray launches 'after-action review' of bureau's investigation**

**June 24**

**Federal appeals judges rule 2-1 that Sullivan has to dismiss the case. Trump takes a victory lap, tweeting 'Great!'**

**July 4**

**Flynn tweets a video of himself taking 'the oath,' a bizarre ceremony linked to the QAnon conspiracy theory, which ends the Oath of Allegiance by saying 'where we go one, we go all,' a QAnon slogan**

**July 9**

**Judge Sullivan asks the entire D.C. appeals circuit to hear the case 'en banc' and overturn the order to dismiss. An unnamed member of the appeals circuit made the same request and the judges voted to hear it 'en banc' August 31, legally ignoring Sullivan's request**

**August 31**

**Entire D.C. appeals circuit rules against Flynn, sending the case back to Sullivan and allowing him to hold an inquiry into DOJ handling of the prosecution**

**September 29**

**Sullivan holds hearing where Flynn's lawyer reveals she briefed Donald Trump personally on the case and asked him not to pardon her client**

**November 25**

**President Trump announces the night before Thanksgiving he has granted Flynn a 'Full Pardon,' calling it a 'Great Honor' and wishing him and his family 'Congratulations'**

**December 12**

**Judge Sullivan formally dismisses the case on the grounds that the pardon renders it moot**

**EXCLUSIVE** Could Charles follow Denmark's Queen Margrethe? King could choose to abdicate in 'five or ten years' and 'pass on' crown to William and Kate

**EXCLUSIVE** Lisa Rinna, 60, cuts a casual figure as she holds hands with husband Harry Hamlin, 72, during a lunch date in L.A. on New Year's Day  
Real Housewives star

► Jessica Simpson, 43, and her mother Tina, 63, look like sisters! The blonde bombshell poses with her business partner mom in her LA mansion  
Mom is 20 years older

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A low-key celebration

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Fans took issue with the character's sense of style

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She's making a change

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QAnon

Donald Trump

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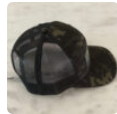
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# **Exhibit 21(a)**



## #ISTANDWITHTHEFLYNN – Black Camo Trucker Hat

★★★★★ (5 customer reviews)

\$36.00


8 in stock

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Description 

Additional information

Reviews (5)

## Description

Last chance on this #ISTANDWITHFLYNN Black Camo Trucker Hat.

- Trucker mesh, Ripstop NYCO Fabric.
- Snapback adjustable with a curved visor and mid-profile crown.
- Artwork in silver moss green.
- Products are manufactured in small batch runs to ensure excellence.

One Size

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General Flynn Camo Hat



\$32.00

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# **Exhibit 22**

2021 WL 3674731

2021 WL 3674731

Only the Westlaw citation is currently available.  
United States District Court, District of Columbia.

UNITED STATES of America  
v.  
Nicholas LANGUERAND, Defendant.

Case No. 21-cr-353 (JDB)

Signed 08/19/2021

**Attorneys and Law Firms**

Robert Craig Juman, U.S. Attorney's Office, Ft. Lauderdale, FL, for United States of America.

William Lawrence Welch, III, Columbia, MD, for Defendant.

**MEMORANDUM OPINION**

JOHN D. BATES, United States District Judge

\*1 Defendant Nicholas Languerand faces a seven-count federal indictment arising from his participation in the events at the United States Capitol on January 6, 2021. Shortly after his arrest in April 2021, a magistrate judge in the District of South Carolina ordered his detention pending trial. Before the Court is Mr. Languerand's motion to revoke that detention order and release him subject to conditions. See Def.'s Mot. for Revocation of Det. Order ("Def.'s Mot.") [ECF No. 18]. The government opposes this request, proffering video, photographic, and documentary evidence in support of its argument that Mr. Languerand "is both [a] risk of flight and a danger to the community." See Gov't's Mem. in Opp'n to Def.'s Mot. to Revoke Det. Order ("Gov't Opp'n") [ECF No. 22] at 1.<sup>1</sup> The Court agrees with the government. For the reasons set forth below, the Court will deny Mr. Languerand's motion.

**Factual Background**<sup>2</sup>

On January 6, 2021, defendant Nicholas Languerand actively participated in a riot at the U.S. Capitol while the U.S. Congress met inside to certify the vote count of the Electoral College in the 2020 presidential election. Statement of

Facts at 2–3. Several photographs and videos show Mr. Languerand near the front of a cluster of approximately a dozen individuals fighting with police at the Capitol's Lower West Terrace archway around 5:00 P.M. on the evening of the 6th.<sup>3</sup> Id. at 3.

\*2 During the scrum, Mr. Languerand threw multiple objects at the officers trying to hold the archway. First, Mr. Languerand picked up and hurled a red traffic bollard made of what appears to be semi-hard plastic toward the archway. See id. at 4; Ex. 1A to Gov't Opp'n at 0:05–0:09.<sup>4</sup> The bollard ricocheted off the riot shield of an officer on the front line before colliding with multiple officers positioned further inside the archway. Ex. 1A to Gov't Opp'n at 0:05–0:09; Ex. 1B to Gov't Opp'n at 0:09–0:12. At another point, Mr. Languerand bent over, picked up what looks like a small canister, and threw it in the direction of the officers in the archway.<sup>5</sup> Ex. 1A to Gov't Opp'n at 0:19–0:23. The videos then capture Mr. Languerand retrieving a stick-like object from the ground and throwing it at the officers, striking the officer on the left flank of the police formation.<sup>6</sup> E.g., id. at 0:44–0:48.

In the ensuing weeks, Mr. Languerand made several social media posts advertising his presence at the Capitol on the 6th and seeking out other participants. On January 19, Mr. Languerand, under the username "blessthisimmunity\_17," posted to Instagram a picture of himself at the Capitol on January 6th with the caption " 'Remember this day forever.' I love you guys." Statement of Facts at 2. Using a very similar username, he posted the same picture on Reddit, asking "How many other wonderful Vermont Patriots were at the legendary and historical DC Storm?"<sup>7</sup> Gov't Opp'n at 4.

On the basis of these social media posts, the FBI was able to identify Mr. Languerand in videos taken at the Capitol on January 6th. Federal agents filed a criminal complaint against him on April 12, 2021, see Criminal Complaint [ECF No. 1], and three days later, he was arrested at his grandparents' home in South Carolina. Gov't Opp'n at 6. At that time, federal agents also searched Mr. Languerand's room, where they found the clothes visible in his social media posts and in the videos from the Capitol. Id. Also in defendant's room was an AR-15 semi-automatic rifle, two shotguns, ammunition for these weapons, a pistol case, a tactical vest, and brass knuckles, id. at 7, as well as a notebook containing a cryptic, undated document mentioning "Washington DC Rally 0700," "emergency [s]upplies," and "Firearms." Id. at 6–7.

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\*3 Law enforcement also seized and accessed Mr. Languerand's cell phone, which contained several references to the events of January 6th and to the FBI. *Id.* at 7. An undated "Note" on defendant's phone states: "If you are ok with fraudulently certifying an election to win, then I'm ok with attacking a government building to stop you." *Id.* at 8. Two notes written in the months following January 6th then express hostility to the FBI's investigation of those events: a "poem" dated March 25 reads "Dear FBI, if you play nice, so will I. If you shoot my dog, we will all die," while an April 9 note states "The FBI should really find a better hobby than intimidating and persecuting the patriots who stood up for their constitutional rights and against the seditious infiltration of the psychopathic criminal mafia into the government that they have sworn to protect." *Id.* at 8–9. The April 9 document is littered with references to various conspiracy theories and concludes with the phrase "Where We Go One, We Go All," a slogan used by adherents of the QAnon conspiracy theory.<sup>8</sup> *Id.* at 9. The phone also contained pictures of leaders of the Proud Boys,<sup>9</sup> the logo of the militia organization the "Three Percenters,"<sup>10</sup> pictures of Nazi iconography, and photos of Mr. Languerand wearing a Guy Fawkes mask and posing with firearms.<sup>11</sup> *See id.* at 9–10.

With the consent of defendant's grandparents, federal agents also searched the trailer in Vermont where Mr. Languerand used to live. *Id.* at 10. There, agents found more notebook pages containing militaristic language seemingly referring to Washington, D.C. One page was headed "(Obj Washington) (N & J)," followed by what appears to be coded language, examples of which include "diamond – road (waiting point)," "emerald – breach point," and "iron – N. obj cleared." *See id.* at 11. Another page was titled "Target list" and included subheadings "Attack," "Breach," and "Assault"—the entries under these headings are incomprehensible alphanumeric character strings. *Id.* Outside the trailer, law enforcement found an old pickup truck and a makeshift target with the rough outline of a human, both "riddled with bullet holes." *Id.* at 10–11.

Six days after his arrest, Magistrate Judge Thomas E. Rogers III of the District of South Carolina ordered that Mr. Languerand be detained prior to trial, finding that he was a flight risk and that he posed a danger to the community if released. *See* Ex. 1 to Def.'s Mot. [ECF No. 18-1] at 3. On May 12, Mr. Languerand was indicted by a federal grand jury on seven counts arising from his actions on January

6th: Civil Disorder, in violation of 18 U.S.C. § 231(a)(3); Assaulting, Resisting, or Impeding Certain Officers Using a Dangerous Weapon, in violation of 18 U.S.C. § 111(a)(1) and (b); Entering and Remaining in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 1752(a)(1) and (b)(1)(A); Disorderly and Disruptive Conduct in a Restricted Building or Grounds with a Deadly or Dangerous Weapons, in violation of 18 U.S.C. § 1752(a)(2) and (b)(1)(A); Engaging in Physical Violence in a Restricted Building or Grounds with a Deadly or Dangerous Weapon, in violation of 18 U.S.C. § 1752(a)(4) and (b)(1)(A); Disorderly Conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D); and Act of Physical Violence in the Capitol Grounds or Buildings, in violation of 40 U.S.C. § 5104(e)(2)(F). *See* Indictment.

\*4 On August 2, Mr. Languerand filed the instant motion seeking to revoke Judge Rogers's detention order and asking this Court to release him from custody pending trial.<sup>12</sup> The government filed an opposition the following day, and oral argument was held on August 5, 2021. The motion is now ripe for adjudication.

### **Legal Standard**

A defendant detained by order of a magistrate judge may file "a motion for revocation or amendment to the order" with "the court having original jurisdiction over the offense." 18 U.S.C. § 3145(b). The D.C. Circuit has not directly decided what standard governs a district court's review of a magistrate judge's detention order, *see United States v. Munchel*, 991 F.3d 1273, 1280 & n.3 (D.C. Cir. 2021), but courts in this District and in other circuits have uniformly held that the magistrate's order is reviewed *de novo*. *See, e.g., United States v. Klein*, Crim. No. 21-236 (JDB), 2021 WL 1377128, at \*3 (D.D.C. Apr. 12, 2021); *Gieswein*, 2021 WL 3168148, at \*6.

Pre-trial detention is governed by the Bail Reform Act of 1984, 18 U.S.C. §§ 3141–3156, which limits detention to those "defendants charged with crimes that are 'the most serious' compared to other federal offenses." *Klein*, 2021 WL 1377128, at \*3 (quoting *United States v. Singleton*, 182 F.3d 7, 13 (D.C. Cir. 1999)). Section 3142 provides that a detention hearing must be held if a case involves certain enumerated categories of offenses, including, as relevant here, a "crime of violence." 18 U.S.C. § 3142(f)(1)(A).<sup>13</sup> The purpose of such a hearing is to "determin[e] whether there are conditions

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of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.” Id. § 3142(g). If there are no such conditions, the court “shall order the detention of the person before trial.” Id. § 3142(e)(1).

In short, “the relevant inquiry is whether the defendant is a ‘flight risk’ or a ‘danger to the community.’ ” United States v. Vasquez-Benitez, 919 F.3d 546, 550 (D.C. Cir. 2019). When making this determination, the court “shall ... take into account the available information concerning” four specified factors: (1) “the nature and circumstances of the offense charged,” (2) “the weight of the evidence against the person,” (3) “the history and characteristics of the person,” and (4) “the nature and seriousness of the danger to any person or the community that would be posed by the person’s release.” 18 U.S.C. § 3142(g). The government bears the burden to justify pre-trial detention: it must either “prove by ‘clear and convincing evidence’ that ‘no condition or combination of conditions will reasonably assure the safety of any other person and the community,’ ” Munchel, 991 F.3d at 1280 (quoting 18 U.S.C. § 3142(f)), or it must show by a preponderance of the evidence “that an individual is a flight risk,” Vasquez-Benitez, 919 F.3d at 551 (citing United States v. Vortis, 785 F.2d 327, 328–29 (D.C. Cir. 1986) (per curiam)). In assessing a defendant’s dangerousness, it is necessary for “the government to establish that the defendant poses a continued ‘articulable threat to an individual or the community’ that cannot be sufficiently mitigated by release conditions.” Padilla, 2021 WL 1751054, at \*4 (quoting Munchel, 991 F.3d at 1280); see also United States v. Hale-Cusanelli, 3 F. 4th 449, 456 (D.C. Cir. 2021) (characterizing the dangerousness inquiry as a “forward-looking determination about the serious risk” posed by a defendant’s release).

## Analysis

### I. Danger to the Community

#### a. Nature and Circumstances of the Offense

\*5 The first factor to consider under § 3142(g) is the “nature and circumstances of the offense charged,” including “whether the offense is a crime of violence.” 18 U.S.C. § 3142(g)(1). In assessing the pre-trial detention of January 6th defendants, this Court, like many other courts in this District, has considered six, non-exclusive “guideposts” set forth by Chief Judge Howell in United States v. Chrestman, Case No.

21-mj-218 (ZMF), 2021 WL 765662, at \*7 (D.D.C. Feb. 26, 2021). The Chrestman factors are designed to “differentiate the severity of the conduct of the hundreds of defendants connected to the events of January 6.” Klein, 2021 WL 1377128, at \*7. They include whether a defendant:

- (1) has been charged with felony or misdemeanor offenses;
- (2) engaged in prior planning before arriving at the Capitol;
- (3) carried or used a dangerous weapon during the riot;
- (4) coordinated with other participants before, during, or after the riot; or (5) assumed either a formal or a de facto leadership role in the assault by encouraging other rioters’ misconduct; and (6) the nature of the defendant’s words and movements during the riot....

Id. (quoting Chrestman, 2021 WL 765662, at \*7–8) (internal quotation marks omitted).

The charges pending against Mr. Languerand are very serious—five of the seven counts in the Indictment are felonies.<sup>14</sup> Although none give rise to a presumption of dangerousness under the Bail Reform Act, see 18 U.S.C. § 3142(e)(2), the felonies are undoubtedly grave offenses, each carrying the possibility of a multi-year prison sentence. This factor thus weighs in favor of detention.

One reason for the seriousness of the charges against him is the fact that Mr. Languerand “carried or used a dangerous weapon during the riot.” The photographic and video evidence proffered by the government shows Mr. Languerand hurling several objects—including a large plastic bollard, a canister of some sort, and a stick-like object—at police officers attempting to hold the Lower West Terrace archway. See Statement of Facts at 3–4; Ex. 1A to Gov’t Opp’n.

Yet, although this conduct differentiates Mr. Languerand from those who did not engage in violence on January 6th, the projectiles at issue here are hardly the most concerning weapons used in the riot. See, e.g., Gieswein, 2021 WL 3168148, at \*10 (noting that the defendant “openly carried a baseball bat and carried and used a chemical spray on law enforcement officers”); see also Klein, 2021 WL 1377128, at \*8 & n.8 (collecting cases in which January 6th defendants “sought to incapacitate and injure members of law enforcement by striking them with fists, batons, baseball bats, [or] poles”). Indeed, Mr. Languerand’s objects are not even the most dangerous weapons visible in the videos proffered by the government, which depict, for instance, an individual

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hammering at an officer's riot shield with a baseball bat. Ex. 1A to Gov't Opp'n at 0:18–0:25.

To be sure, the mere decision to utilize an object as a weapon against law enforcement is a very serious offense, and Mr. Languerand's projectiles were far from harmless: the plastic bollard he hurled at the officers was particularly substantial. See, e.g., id. at 0:06–0:08. But while this factor undoubtedly sets Mr. Languerand apart from the many rioters who used no weapons at all, it weighs only moderately in favor of detention.

\*6 There is some evidence that Mr. Languerand engaged in planning before arriving at the Capitol, but the precise nature of this “planning”—and indeed the meaning of the government's proffered evidence—is unclear. The government relies on two notebooks, one found in South Carolina and one found at defendant's former residence in Vermont. These documents contain cryptic, seemingly militaristic language referring to Washington, D.C., see Gov't Opp'n at 7, 11, but it is difficult to meaningfully interpret them further, as neither is dated and both appear to be written in some kind of code.

The proffered notebooks do indicate that Mr. Languerand was “not just caught up in the frenzy of the crowd.” Chrestman, 2021 WL 765662, at \*8. Rather, these documents suggest that defendant had contemplated some form of violence against the nation's capital. They do not, however, support any more specific finding of “planning” for his activities on the 6th. Notably, Mr. Languerand was dressed in plain clothes during his altercation at the Capitol; unlike the defendants in Chrestman and Gieswein, there is no evidence that Mr. Languerand brought any weapons, tactical gear, or other combat supplies with him to Washington. See id. at \*15; Gieswein, 2021 WL 3168148, at \*10 (“[The defendant's] decision to arrive at the Capitol on January 6, 2021 wearing specialized gear and carrying weapons suggests that he ... came to Washington, D.C. with the intention of causing mayhem and disrupting the democratic process.” (citation and quotation marks omitted)). This Chrestman factor thus weighs only marginally in favor of detention.

Relatedly, there is no evidence that Mr. Languerand “coordinat[ed] with other participants before ... the riot,” nor does it appear that he did so on the 6th. The government disagrees, contending that Mr. Languerand's “attacks on law enforcement were coordinated with other rioters” because his conduct took place “in conjunction with [a] crowd of

rioters gathered at the Lower West Terrace archway.” Gov't Opp'n at 13. But violent conduct in the midst of a crowd is simply in the nature of a riot—the government's broad interpretation of “coordination” would sweep in nearly every January 6th defendant who engaged in any violence, fatally weakening the Chrestman factors' value in differentiating between the varying levels of culpability among January 6th defendants. Without more specific evidence of coordination (such as group planning, tactical movements, or simultaneous communication), this factor does not favor pre-trial detention. Cf. Chrestman, 2021 WL 765662, at \*2–3 (defendant, along with the other members of his group, wore a helmet marked with orange tape, strategically changed headgear, and removed a flag from his weapon during course of riot); Pezzola, 2021 WL 1026125, at \*7 (defendant “bought a radio device that could be used to communicate with other members of [the Proud Boys]” and then “[wore] an earpiece on January 6”); United States v. Caldwell, Crim. A. No. 21-181 (CKK), 2021 WL 2036667, at \*8 (D.D.C. May 21, 2021) (defendant “us[ed] a Baofeng radio during the riot ... support[ing] an inference that [he] was coordinating with other rioters”).

The government also contends that Mr. Languerand, by choosing to engage in violence while other protestors behind him did not, took on a “leadership role with respect to the rioters behind him,” Gov't Opp'n at 13, even though the government concedes that Mr. Languerand did not “verbally encourage[ ] violence,” Hr'g Tr. at 11. The Court is not persuaded. Like the government's understanding of “coordination,” this argument sweeps far too broadly, applying to potentially every violent rioter on January 6th and essentially nullifying this useful consideration.

\*7 Although verbal encouragement of violence is not the only way for a January 6th defendant to have taken on a “leadership role,” conduct that can constitute de facto leadership is different in kind from the (nonetheless troubling) actions of Mr. Languerand. For instance, a defendant who “was the first to pull [an] officer away from his post and into the crowd,” kicking off a frenzy of beatings by others around him, is properly deemed to have “assumed a de facto leadership role.” See United States v. Whitton, Crim. A. No. 21-35-5 (EGS), 2021 WL 1546931, at \*8 (D.D.C. Apr. 20, 2021). But this is the exception. Even “pointing to others attempting to break through [a Capitol window] and “urg[ing] the mob to advance on retreating law enforcement officers ... by waving his arms forward” has been found insufficient to constitute “leadership.” Gieswein, 2021 WL 3168148, at \*11. The government has not alleged any conduct by Mr.



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Languerand rising to the level of *de facto* leadership. Mere presence on the front lines is not enough to weigh in favor of detention here. See United States v. Sabol, Crim. A. No. 21-35-1 (EGS), 2021 WL 1405945 at \*13 (D.D.C. Apr. 14, 2021) (rejecting a similar argument).

The final Chrestman factor is something of a catch-all: the court assesses “the defendant’s words and movements during the riot” in an effort to gauge the “egregiousness of his conduct” and the “extent of a defendant’s disregard for the institutions of government and the rule of law.” Chrestman, 2021 WL 765662, at \*8. Mr. Languerand’s actions on January 6th place him somewhere in the middle of the spectrum of “egregiousness.”

Defendant’s decision to engage in violence in order to subvert the orderly transition of power is the principal consideration here, and it weighs strongly in favor of detention. Both the D.C. Circuit and other courts in this District have drawn a distinction between “those who actually assaulted police officers” and those who merely “cheered on the violence or entered the Capitol after others cleared the way.” Munchel, 991 F.3d at 1284 (citation omitted); see also Chrestman, 2021 WL 765662, at \*8 (“The conduct of a defendant who injured, attempted to injure, or threatened to injure others ... is more troubling than the conduct of a defendant who, though unlawfully present in a restricted area, merely wandered the premises.”). Mr. Languerand’s conduct indisputably puts him in the former Munchel category. Whereas other demonstrators hung back, Mr. Languerand placed himself among the front ranks of the rioters, violently confronting the police officers seeking to protect members of Congress and secure the Capitol.<sup>15</sup> Moreover, Mr. Languerand’s actions unmistakably suggest an intent to harm those officers: “Intentional and purposeful assaultive conduct, particularly involving multiple incidents ... are all indicia of dangerousness that may warrant pretrial detention.” United States v. Owens, No. 21-CR-286 (BAH), 2021 WL 2188144, at \*12 (D.D.C. May 28, 2021) (citing Padilla, 2021 WL 1751054, at \*2).

But the Court does not agree with the government that Mr. Languerand belongs in “the most serious category of offenders.” Gov’t Opp’n at 12. Munchel’s dichotomy between violent rioters and non-violent rioters, though an important consideration, is not the be-all and end-all of the § 3142 inquiry. See Padilla, 2021 WL 1751054, at \*6 n.4 (“[T]he line drawn in Munchel [does not] absolve[ ] the district court of the need to probe the precise nature of a defendant’s actions ....”). Not every January 6th rioter “necessarily pose[s] the same

risk of danger,” Hale-Cusanelli, 3 F.4th at 456, and each case requires a nuanced, fact-specific analysis. See Munchel, 991 F.3d at 1283 (citing United States v. Tortora, 922 F.2d 880, 888 (1st Cir. 1990)). As noted above, Mr. Languerand’s projectiles, though clearly deployed as weapons against law enforcement, were not especially dangerous, at least not compared with the batons, baseball bats, bottles, flagpoles, and hockey sticks used by other rioters. See Klein, 2021 WL 1377128, at \*8 & n.8 (collecting cases). And although Mr. Languerand appears to have vaguely anticipated violence, the government has proffered no evidence suggesting that he helped to plan the riot or that he brought supplies or weapons with him to the Capitol.

\*8 Nonetheless, the fact that Mr. Languerand could have been more culpable does not mean he is not dangerous. Cf. Hale-Cusanelli, 3 F.4th at 456 (rejecting the suggestion that “January 6 defendants should get the special treatment of an automatic exemption from detention if they did not commit violence on that particular day”). “It cannot be gainsaid that the violent breach of the Capitol on January 6 was a grave danger to our democracy,” Munchel, 991 F.3d at 1284, and Mr. Languerand’s active participation in that event “evinces a clear disregard for the law, an aversion to the fundamental tenets of our democracy, and a willingness to act violently when he believes he is ‘fighting tyranny,’ all of which indicate that he poses a danger to the community,” Sabol, 2021 WL 1405945, at \*13. Indeed, “if any crime establishes danger to the community and a disregard for the rule of law, assaulting a riot-gear-clad police officer does.” United States v. Fairlamb, Case No. 1:21-CR-120-RCL, 2021 WL 1614821, at \*5 (D.D.C. Apr. 26, 2021). So although Mr. Languerand’s conduct was not as egregious as it might have been, the Court concludes that the nature and circumstances of his offenses weigh in favor of his continued detention.

#### b. The Weight of the Evidence

The second factor to be considered under § 3142(g) is “the weight of the evidence against the person.” 18 U.S.C. § 3142(g)(2). The government contends that this factor “clearly weighs in favor of detention,” as “[t]he evidence against the defendant is overwhelming.” Gov’t Opp’n at 14. The Court agrees. Mr. Languerand has repeatedly confirmed his presence at the Capitol through posts on social media, and he is clearly identifiable in several videos of the event, thanks to a conspicuous red and black hat later found at his residence. Id. at 3–6; Exs. 1A & 1B to Gov’t Opp’n. In sum, this factor too weighs in favor of detention, even though it “is the least